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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/587,290

01/04/2008

Richard Rollin

5297/262

7271

20306

7590

03/04/2009

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EXAMINER

RANADE, DIVA

ART UNIT

PAPER NUMBER

3763

MAIL DATE

DELIVERY MODE

03/04/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/587,290	<b>Applicant(s)</b> ROLLIN, RICHARD	
	<b>Examiner</b> DIVA RANADE	<b>Art Unit</b> 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 January 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07/25/06 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07/25/06</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Specification***

The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

1. The spacing of the lines of the specification is such as to make reading difficult. New application papers with lines 1½ or double spaced on good quality paper are required.

### ***Claim Rejections - 35 USC § 102***

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 7, 9 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Publication 2004/0087898 to Weniger.

- a. Claim 1: Weniger shows a breast cap insert (110) for a breast pump (30), which breast cap insert is designed to lie on an areola of a female breast during use, said breast cap insert comprising a frustoconical base body with a large rear opening (112) and a small front opening (114), said base body being designed to be received in a funnel (66) of a breast cap (60), characterized in that the frustoconical base body is at least partly made of a heat-accumulating and/or heat-conducting material and is warmed during use, this warming not exclusively

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taking place through transfer of body temperature from the female breast (See [0053]).

b. Claim 7: Weniger shows the breast cap insert with means for securing the base body in the funnel of the breast cap (See Fig 3 (116)).

c. Claim 9: Weniger shows a breast cap insert for a breast pump, which breast cap insert is designed to lie on an areola of a female breast during use, said breast cap insert comprising a frustoconical base body with a large rear opening and a small front opening, said base body being designed to be received in a funnel of a breast cap (See Fig 3 and 11), characterized in that at least the base body is capable of being made of a foam or a foam-like material, in particular of polyurethane foam or a polyolefin foam ([0061]).

d. Claim 10: Weniger shows a breast cap (60) of a breast pump (30) for use with a breast cap insert (110) in which the breast cap has a heating system (300) for warming the breast cap insert fitted in the breast cap.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 5, 6, 8, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication 2004/0087898 to Weniger.

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e. Claims 5 and 11: Weniger shows does not show in which the base body (110) is provided with at least one resistance heating element , and the insert has electrical contact means connected to the at least one resistance heating element or that the breast cap has electrical contact means for making contact with the insert as in claim 11. However, Weniger does show that the body of the breast cap contains at least one resistance heating element which is mean to warm the insert as well (See [0053]). However, it would be obvious to one skilled in the art during the time of the invention to provide the heating element with the base body rather than on the cap in order to decrease warming time of the insert. As warming the insert independently of the breast cap is well known in the art. Furthermore, it would be obvious to add electrical contact means in order to power the heating element.

f. Claims 6 and 12: Weniger does not show a trigger means for activating a heating system (300) arranged in the funnel of the breast cap during use but does show that a control device (422) capable of being any type of control device (See [0057]) and therefore it would be obvious to one skilled in the art during the time of the invention to use a trigger as a means to control the heating element in order to reduce the number of parts associated with the pump assembly and further to include a switch on the cap in order to allow the trigger to function as in claim 12.

g. Claim 8: Weniger does not show the breast cap insert, in which the means for securing the base body is a collar surrounding the large opening. However, it

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would be obvious to add a collar as described if the insert were disposable or needed to be changed often for sterilization purposes. Therefore, modifying the insert with a collar would have been obvious to one skilled in the art during the time of the invention in order to simplify the exchange procedure for an insert.

5. Claims 2-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Publication 2004/0087898 to Weniger in view of U.S. Publication 2004/0029486 to Greter et al.

h. Claim 2: Weniger shows the insert having an inner cone wall and outer cone wall but does not show the walls forming a chamber, the chamber being provided with a heat- accumulating and/or heat-conducting filler medium. However, Greter does show these elements (See [0012]). Furthermore, Greter shows that the inner cone wall is elastically deformable as in claim 3 and that the filler can be a gel as in claim 4. It would be obvious to replace the insert of Weniger with the insert of Greter in order to create have an insert with greater heat- accumulating and/or heat-conducting capabilities.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DIVA RANADE whose telephone number is (571)270-7456. The examiner can normally be reached on M-F, 7:30-5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DIVA RANADE/  
Examiner, Art Unit 3763

/Nicholas D Lucchesi/  
Supervisory Patent Examiner, Art Unit 3763